

2004

WORKERS'
COMPENSATION
COURT

EFFICIENT
EQUITABLE
RELIEF

OUR MISSION

To provide *reliable* and *reasonable* benefits
in a *just* and *efficient* manner,
with *compassion* and *respect*,
to all employees who suffer
a work-related injury.

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STATISTICAL HIGHLIGHTS



While the task of preparing the annual report of the Rhode Island Workers' Compensation Court is required by statute, it also provides an opportunity for the Court to assess its own performance in the past year and to focus upon its goals for the future. It is also an ideal time to reiterate the Court's mission statement and to ask the critical question of what must be done to ensure that the Court and its employees continue to focus on our duty to the citizens of the State of Rhode Island. This task is even more important as I complete my first year as the Chief Judge of this Court.

Initially, I am extremely proud to state that the Court continues to function efficiently and to comply with the time frames required by the Rhode Island Workers' Compensation Act. Most significantly, cases filed with the Court are still reached for pretrial conference within twenty-one days of the date they are received and almost three quarters of the cases filed with the Court are resolved at the pretrial conference. The continued compliance with these vital time frames ensures that the Court can meet the needs of its clients in a prompt, efficient and equitable manner.

One of the overarching principles on which this Court was founded is that each person who files a petition seeking the assistance of the Workers' Compensation Court is entitled to a meaningful hearing as soon as practicable. Any unnecessary delay which invades this system can cause irreparable harm to the litigants. The injured employee who requires the Court's intervention to obtain a wage replacement benefit during a period of incapacity will soon face financial ruin if the resolution of the claim is unnecessarily delayed. Business can quickly become unprofitable if employees are receiving benefits to which they are not entitled. Most significantly, the citizens will quickly lose faith in their institutions of government if we can not address their concerns in the most efficient manner possible. These philosophical concerns meet practical reality in the Workers' Compensation Act. The architects of the Rhode Island compensation system understood the deleterious effect which delay and inefficiency had on the process and the fact that inefficiency was a self-perpetuating problem. They crafted a statutory model designed to eliminate all unnecessary delay and to provide the most efficient dispute resolution system possible. Each employee of the Court is pledged to make that underlying principle a practical reality.

In 2004, the Court continued to meet its lofty goals. Despite the shortage of one judge, the Court continued to efficiently dispose of its cases in a timely and efficient manner; while dispositions lagged slightly behind case filings, the number of petitions closed at the pretrial conference continued to increase. In addition, the Appellate Division's pending caseload fell to a record low. The Court continues to improve and will pursue its goal to find new procedures to increase its effectiveness.

In this report, we will attempt to discuss our achievements in the last year, to confront our deficiencies and to discuss our initiatives to provide better service to our clients. It will also discuss the Court's goals for the future. The Court must not lose sight of its mission to serve the workers of this state and will pursue active efforts to educate those who seek our assistance regardless of any language barriers which might exist. Finally, the Court will continue its efforts to deal with those employers who fail to maintain the required policies of workers' compensation insurance. We are sure that we can respond to these challenges and create solutions to provide the best service possible to the litigants who seek our help.

Thank you for your continued interest and support of the Workers' Compensation Court.



Photo by: Constance Brown

GEORGE E. HEALY, JR.
Chief Judge

JURISDICTION AND PROCESS

The Workers' Compensation Court is charged with jurisdiction over all disputes between an employer and an employee related to workers' compensation. The litigation brought before the Court varies from a simple petition seeking a determination that the employee was injured in the course of employment to the resolution of complex medical issues relating to the nature and extent of the employee's disability. All cases are heard before a single judge sitting without a jury. The trials before the Court follow the Rhode Island Rules of Evidence and the Workers' Compensation Court Rules of Practice. At the close of evidence, the trial judge renders a decision and decree addressing the merits of the controversy.

As the compensation act has been revised and the benefits expanded, the Court's role in the process has also been extended. The Court hears all disputes relating to the payment of benefits for loss of use and disfigurement. It also has original jurisdiction over petitions brought by the employee seeking a right of reinstatement and petitions which attempt to craft a rehabilitation plan for an injured worker. Finally, all compensation settlements must be heard by the Court to ensure that the proposed settlement is in the best interest of all parties to the system.

If any party to a workers' compensation claim is dissatisfied with the Court's decision, the first step in the appellate process is within the Compensation Court. After the appeal is perfected, the matter is assigned to an appellate panel which must review the record, the reasons of appeal, the parties' memoranda, and, thereafter, submit a written decision. Any party who is dissatisfied with the decision of the Appellate Division may petition the Rhode Island Supreme Court for a writ of certiorari to pursue the appeal in that forum.



The Appellate Division hears oral arguments.

THREE STAGES OF LITIGATION

PRETRIAL

The Workers' Compensation Act requires that all pretrials must be heard within twenty-one (21) days of the date the petition is filed. The Court continues to adhere to this important mandate.

TRIAL

If either party is dissatisfied with the pretrial order, the matter may be appealed for full trial on the merits, following which the Court issues a formal decision and decree.

APPELLATE

Any person who is dissatisfied with the decision and decree of the trial judge has the right to claim an appeal to the Appellate Division. When the appeal is perfected, the Chief Judge assigns the matter to a panel of three judges who are required to review the file and the reasons of appeal and to hear oral argument to determine whether the appeal has merit.

MILESTONES

On August 27, 2004, George E. Healy, Jr.

was sworn in by Governor Donald Carcieri as Chief Judge of the Workers' Compensation Court. **Chief Judge Healy**, a graduate of Northeastern University and Suffolk University Law School, has been a Workers' Compensation Court Judge since 1991. He served as Interim Chief Judge since the retirement of Chief Judge Robert F. Arrigan in December of 2003. Chief Judge Healy has offered his expertise on numerous boards and commissions. He has also served as an adjunct professor at Roger Williams University and the Community College of Rhode Island. The determination to maintain the most effective, efficient, and equitable workers' compensation system possible stands firmly at the base of Chief Judge Healy's vision for the Court. He recognizes the success of the Court as a group effort and commends the Workers' Compensation Court staff and Chief Judge Robert F. Arrigan for their dedication and commitment.

Retired Chief Judge Robert F. Arrigan was honored with a Lifetime Achievement Award at the Seventh Annual New England Workers' Compensation Conference. The event was held October 31 to November 2, 2004 at the Hyatt Regency Hotel in Newport, Rhode Island. Robert F. Arrigan became Chief Judge of the Rhode Island Workers' Compensation Court on December 19, 1991, at a time when the Court's backlog was burdensome and the delay in scheduling pretrial conferences substantial. Due to the efforts of Chief Judge Arrigan, and the entire Workers' Compensation Court staff, the backlog was reduced and then eliminated. In 1992, the Medical Advisory

Board

was created. Its members, recognized as experts within their fields, were appointed by the Chief Judge. This Board has been responsible for the preparation of protocols for the treatment of work-related injuries. The success of the Rhode Island workers' compensation system, as well as the Medical Advisory Board's *Protocols*, has become a national model in the field of workers' compensation. Chief Judge Arrigan recognized the importance of educating the public concerning the judicial system. Members of the Court have participated in educational seminars for physicians' office staff, adjusters, and attorneys. They have also participated in the mock trial process for junior and senior high school students.

The Rhode Island Legal/Education Partnership presented the 2004 Giannini Award to Workers' Compensation Court **Judge Edward P. Sowa, Jr.** The award ceremony, which took place May 20, 2004, highlighted Judge Sowa's contribution to law related education. Judge Sowa presided over 40 mock trials. At the ceremony, Judge Sowa praised the late Judge Giannini's contribution to the Rhode Island judicial system. He considers receiving this award both a humbling and gratifying acknowledgment. Although all of the trials he presided over follow the same fact pattern, the student lawyers bring something new and enlightening to every presentation, making each event a learning experience for all. Congratulations, Judge Sowa, for an honor well-deserved.

Denise Lombardi joined the Workers'

Compensation Court in January of 2004 as the Associate Deputy Administrator/Systems. Ms. Lombardi has served

the State of Rhode Island for 28 years. She was

Dennis I. Revens, Administrator of the Workers' Compensation Court since 1991, has retired after 32 years of State service.

John Sabatini, Deputy Administrator of the Workers' Compensation Court, is serving as Interim Administrator.

He was instrumental in the crafting of the 1990 Workers' Compensation Reform Act.

instrumental in leading the Superior Court's conversion of its criminal system. As the Workers' Compensation Court is in the process of converting its civil data, Denise's skills and expertise are certainly welcome and valuable assets to the Court.

Maureen H. Aveno was named Executive Director of the Workers' Compensation Court in October of 2004.

Ms. Aveno has served the Rhode Island Judiciary for twenty-five years. She has been with the Workers' Compensation Court since 1990, most recently as Medical Advisory Board Administrator.

BRING THE KIDS TO WORK DAY

Rhode Island's Workers' Compensation Court hosted its second annual Bring the Kids to Work Day on Tuesday, April 13, 2004. Children, grandchildren, and other junior family members and friends attended. Over 35 children took part in an array of activities including hat painting, spin art, and bird feeder making. The children participated in two mock trials and also met with employees from the Sheriff's Department and the Department of Corrections.

The children were also treated to a tour by the Capitol Police, which included a tutorial of the courthouse x-ray machine and magnetometer. The day ended with a "make your own sundae" party, which all participants gratefully welcomed, and deserved!

APPELLATE HIGHLIGHTS

The Appellate Division is one of the more unique aspects of Rhode Island Workers' Compensation Court. This Court is the only tribunal in the state judiciary to have an intermediate Appellate Division to hear and decide appeals from the trial court. Pursuant to R.I.G.L. §28-35-28 of the compensation act, any person who is aggrieved by the Court's decision following a full trial on the merits has the right to appeal that case to the Appellate Division of the Workers' Compensation Court.

The Court's appellate panel is comprised of three members appointed by the Chief Judge of the Court. The party who claims the appeal must file reasons of appeal within the time specified by the Court setting forth the basis for the appeal and the grounds upon which the trial decision should be reversed. The appellant may also file memoranda setting forth the legal and factual arguments in support of the appeal. Thereafter, the appellee is given the opportunity to file a reply memorandum in support of the trial judge's decision. Following the filing of the written memoranda, the case is normally assigned to oral argument before the three member appellate panel. The Appellate Division reviews the trial court's decision in light of the legal and factual arguments presented to determine whether the decision should be sustained or reversed. The appellate panel may (a) sustain the decision of the trial judge and dismiss the appeal; (b) reverse the trial court and enter a new decree in accordance with their decision; or (c) reverse in part and modify the earlier decree. In the event that one of the parties is dissatisfied with the Appellate Division decree, an appeal may be pursued to the Rhode Island Supreme Court. This appeal is not a matter of right and may be pursued only in those cases where the Supreme Court has granted a writ of certiorari to have the case heard before it.

It must be noted that even in those cases heard before the Appellate Division, much deference is accorded to the factual determinations made by the trial judge. R.I.G.L. §28-35-28 specifically notes that "the findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous", thus, if the record before the Appellate Division reveals any evidence to support the trial court's factual determination, the decision will stand.

In light of this limited basis upon which to review the Court's factual decisions, the focus of cases heard at the Appellate Division has been to review the legal issues which arise. Naturally, such review requires extensive research and the preparation of a formal written decision. Under such circumstances, the procedure before the Appellate Division can be extremely time consuming.

In recent years, the Court has worked diligently to reduce the appellate backlog. In 2002 there were 172 cases pending before the Appellate Division. At that time, the Court undertook several initiatives to reduce the caseload. The hallmark of this effort was the appellate settlement conference. This program was originally begun as a pilot program requiring voluntary participation by the attorneys involved in the appeal. The purpose of this mediation program is two-fold. Initially, it provides the final opportunity for the parties to engage in meaningful settlement negotiation before the appeal is heard and decided. The timing of this conference is extremely important since it is conducted after the entry of a decree by the trial court. Often, the parties are unable to engage in productive discussions while the matter is pending before the trial court either because one of the litigants maintains unrealistic attitudes toward the claim or because the parties need the opportunity to present their case to the Court. In any event, the decision of the trial court may better focus the litigants' expectations and they may be more amenable to a compromise of their claim.

The second purpose of the settlement conference is also extremely valuable. Even if the matter can not be resolved, the parties are required to clarify the issues on appeal and the judge conducting the conference has the opportunity to determine whether the issues raised in the appeal should be heard at oral argument or may be managed in a more expedited fashion. If the appeal challenges the Court's factual findings or if it is controlled by settled law, the Appellate Division may deal with it in a more perfunctory and less time consuming manner. This screening allows the Appellate Division to prioritize the cases on appeal and deal with the less complicated claims in a summary fashion. In turn, this winnowing process permits the Appellate Division to appropriately focus its time on the more difficult and time consuming legal issues presented to it.

Under the supervision of Judge Debra Olsson, the Appellate Division has made remarkable strides in eliminating the backlog. As noted above, in 2002, there were 172 cases pending before the Appellate Division. In 2003, this figure was reduced to 122 (a decrease of 29%). At the end of 2004, the number of pending cases was further reduced to 93 (an additional reduction of 23%). Thus, since 2002, the pending caseload has decreased by more than 45%. As discussed earlier, this dramatic improvement is due in part to the successful mediation process and, more significantly, to the dedication and devotion of the judges assigned to the Appellate Division. These improvements further demonstrate the Court's continued unrelenting commitment to provide effective dispute resolution at every aspect to the litigation process.

THE JUDGES



Photo by: Constance Brown

JUDGES

(clockwise from upper left)

The Honorable George T. Salem, Jr.

The Honorable Edward P. Sowa, Jr.

The Honorable Janette A. Bertness

The Honorable Dianne M. Connor

The Honorable Hugo L. Ricci, Jr.

The Honorable Debra L. Olsson

The Honorable George E. Healy, Jr.
Chief Judge

The Honorable John Rotondi, Jr.

The Honorable Bruce Q. Morin



Justice Independence Honor

MEDICAL ADVISORY BOARD

2004 HIGHLIGHTS

MISSION:

“ensure that every person who suffers a compensable injury with resulting disability should be provided with high quality medical care and the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.”

Dr. Randall Updegrove was appointed by Chief Judge George E. Healy, Jr. to the Medical Advisory Board in October of 2004. Dr. Updegrove is a graduate of the Brown University School of Medicine. His specialty is occupational medicine, and his office is located in Warwick, Rhode Island.

Vincent Yakavonis, MD, was appointed by Chief Judge George E. Healy, Jr. as Chair of the Medical Advisory Board in November of 2004. Dr. Yakavonis, an orthopedic surgeon, has served as a member of the Medical Advisory Board since February of 2000. His medical office is located in Warwick, Rhode Island. Dr. Yakavonis is a graduate of Brown University and New York University School of Medicine.

Dr. Yakavonis was instrumental in the recent review of the Medical Advisory Board protocols. This review included the protocols concerning lumbar fusion, knee injury, and the use of intravenous IV Robaxin. Dr. Yakavonis participated in the first educational seminar for impartial medical examiners and has also been involved in outreach efforts regarding the Hispanic community and the workers' compensation process. He served on a subcommittee of the Board which was directed toward the discussion of Medicare Set-Aside Agreements. The former Chair, Julius Stoll, Jr., MD, retains a seat on the eleven-member Board.



Medical Advisory Board from left to right: Judith Ricci, MS PT; Julius Stoll, Jr., MD; Christopher Black, DC; Randall Updegrove, MD; Daniel Harrop, MD; John Parziale, MD; Dawn Richardson, MD; Peter Pizzarello, MD; Vincent Yakavonis, MD; Frank Merlino, MD. Missing: M. Howard Friedman, MD.

2004 HIGHLIGHTS CONTINUED

In 1992, under the direction of the Chief Judge, the Medical Advisory Board was established to provide guidance, treatment standards and policy formulation for the workers' compensation system. Since that time, current and former members of the Medical Advisory Board have worked tirelessly to make certain that an injured worker within the State of Rhode Island receives the necessary expert healthcare from the finest physicians available.

The efforts of the Medical Advisory Board have streamlined the process by which the legal and medical communities interact within the workers' compensation system resulting in more efficient management of cases. Further, the board has compiled a set of protocols for the most frequent types of work related injuries in Rhode Island. This not only enables an injured worker to receive the care they deserve, but also limits costly and unnecessary intervention, or delay to gainful employment.

The Rhode Island Workers' Compensation Court Medical Advisory Board approves and maintains Preferred Provider Networks (PPNs) for employers and insurers throughout the state. Their supervision ensures that an injured worker can receive appropriate care within his/her employer's PPN.

Within the workers' compensation system, there are often cases where a difference of opinion arises between healthcare providers on a medical issue relating to an injured worker. The compensation law allows for the appointment of an Impartial Medical Examiner (IME). The Medical Advisory Board approves and maintains the Workers' Compensation Court's register of these IMEs.

The efforts of the Medical Advisory Board are exceptional and have been recognized as a national model. Members of the Board have exhibited great dedication, energy and commitment to the well being of Rhode Island's injured workers.

2nd Annual IME Seminar

On the evening of October 5, 2004, the Workers' Compensation Court Medical Advisory Board held the 2nd Annual Seminar for Independent Medical Examiners (IMEs). Over fifty healthcare providers of various specialties, current IMEs and any healthcare providers interested in becoming an IME, convened at the Garrahy Complex.

The 2nd Annual IME Seminar specifically focused on functional impairment. Participants heard presentations from physicians and attorneys, as well as Chief Judge George E. Healy regarding loss of use and disfigurement as they relate to the IME process. The need for these seminars grew out of an effort to recruit new IMEs as well as educate existing ones. The IME seminars have proven to be an effective medium to familiarize healthcare providers with procedures and expectations related to the exams they perform when they are called upon by the Court to render a medical opinion regarding an injured worker's status.

The educational seminar acts as an open forum for discussion between the medical and legal communities. Most importantly, it benefits the Court by providing important and useful information to our IMEs, and serves as a valuable method in recruiting new IMEs.

The 2004 seminar for IMEs proved informational and effective for the physicians, attorneys, and members of the Court. The Court looks forward to conducting future seminars to discuss issues critical to the workers' compensation system and foster an improved working relationship between the legal and medical communities.

*John F. McBurney, IV
joined the Workers'
Compensation Court
in November of 2004 as
Medical Advisory Board
Administrator.*

*Mr. McBurney is a graduate
of the University of Rhode
Island and previously served
the Judiciary at the Rhode
Island Superior Court Jury
Commissioner's Office.*

*Dr. Thomas Forsythe (Radiology, Ret.), resigned from the Medical
Advisory Board in July of 2004. Dr. Forsythe is a graduate of Brown
University and Tufts College Medical School. He served from 1946 to
1949 in the U.S.A.F. Medical Corps as a separated captain and
flight surgeon. Dr. Forsythe, a member of the Board since
its creation in 1992, was instrumental in the original
drafting of the protocols and standards of
treatment for compensable injury.*

STATISTICS

COURT PRODUCTIVITY

	2004	2003	2002	2001
Petitions Filed	8,564	8,684	8,982	8,964
Petitions Disposed	8,429	8,775	9,258	8,877

PETITIONS FILED BY CASE TYPE

Case Type	2004	2003	2002	2001
Original Petition	2,899	3,027	3,076	3,201
Employee's Petition to Review	2,165	2,171	2,178	2,400
Employer's Petition to Review	1,646	1,568	1,767	1,678
Lump Sum Settlements	669	780	856	713
Petition to Enforce	983	873	929	786
Petition for 2nd Injury Fund	0	0	0	1
Petition for Medical Payment	66	161	70	42
Miscellaneous Petition	136	104	106	143
Total	8,564	8,684	8,982	8,964

DISPOSITION RATES

	2004	2003	2002	2001
Pretrial	73%	70%	67.6%	70%
Trial	25%	29%	31.1%	29%
Appellate	2%	1%	1.3%	1%

PRETRIAL TIME FRAMES

	2004	2003	2002	2001
0-60 Days	80%	81%	82.4%	84%
61-90 Days	8%	13%	7.2%	7%
91+ Days	12%	6%	10.4%	9%

APPELLATE CASE MANAGEMENT

	2004	2003	2002	2001
Appeals Taken	67	102	144	151
Appeals Disposed	95	145	121	101

STATISTICAL HIGHLIGHTS

A review of the Court's statistics for the most recent year provides several sources of pride and also highlights several areas for improvement. As noted earlier, the



backlog before the Appellate Division has been virtually eliminated. The number of appellate cases pending before the Court at the end of 2004 has dropped lower than anyone thought possible. Bringing the appellate backlog current was the final and most difficult goal which the Court had set for itself and we are extremely gratified by this significant accomplishment.

In other areas, the Court's results were still positive although they reveal several developments which require discussion. In particular, the statistical record relating to dispositions at pretrial demonstrate conflicting trends. On one hand, the percentage of pretrials concluded within sixty days has dropped slightly from 84% in 2001 to 80% in 2004. The number of pretrials requiring more than ninety days to resolve has increased, albeit in a slightly lower proportion from 9% in 2001 to 12% in 2004. At first glance, this trend, although relatively minor, is disturbing. Since the primary focus of the pretrial procedure is to provide an expedited hearing of all cases filed with the Court, a significant increase in the percentage of cases which are not resolved within ninety days demonstrates a need for improvement.

The initial concern regarding this statistic must be tempered by the evaluation of another extremely promising development. During the same period of time, the percentage of cases resolved at the pretrial stage rose by 3%, from 70% in 2001 to 73% in 2004. This is a very encouraging trend and reinforces the concept that the pretrial procedure is working. The paramount goal of the entire procedural reform was to provide an expedited dispute resolution system to allow the Court to address the routine matters as quickly as possible while properly focusing our resources on the more complex cases requiring trial. Thus, an increase in the number of cases closed at the pretrial stage emphatically reinforces the idea that the Court's expedited dispute resolution process is functioning well. In that light, it must be noted that the Court has never achieved this level of success in resolving cases at pretrial.

The conflict in these two results obviously requires further monitoring and analysis. While the attenuated time frames are a source of anxiety, it is yet to be determined whether the devotion of additional time is the price which must be exacted to resolve a more difficult case at the pretrial stage. This may generate some debate, but such discourse must await further analysis to determine whether a cause and effect situation exists.

One other trend which continues to develop involves petitions to settle future benefits, commonly referred to as lump sum settlements. In recent years, the number of such cases has declined significantly from 856 in 2002 to 669 in 2004. This reflects a 22% decrease in filings in cases of this nature. This decline

can be directly traced to the recent involvement of the Federal Center for Medicare and Medicaid Services (CMS) in these cases. CMS' assertion of a lien against future benefits and the resulting exorbitant time frames to address their interests has certainly had a chilling effect on the settlement of compensation claims. The federal involvement has had an extremely deleterious impact on this Court's efficiency in dealing with cases in which CMS has expressed an interest and has prevented the settlement of some of the relatively minor cases. Unfortunately the inability to resolve these smaller cases will ultimately cause an increase in litigation to bring these matters to a conclusion. The Court is in the process of adopting new procedures in an effort to address the concerns of the federal government in the most efficient manner possible.

As noted earlier, this Court continues to monitor its efficiency on a regular basis to ensure that we meet the needs of all parties to the system. The Court is proud of its successes because they graphically demonstrate our commitment to serve the citizens of the State of Rhode Island. By



the same token, our professionalism demands that we critically evaluate our performance to ensure that we continue to properly serve those who seek our assistance.

The annual report would not have been possible without the assistance of numerous employees from the Judiciary. In particular, the Court would like to thank Seana SanAntonio and Carol Costa of the Supreme Court's Office of Community Outreach and Public Relations. We would also like to extend our appreciation to Fay Dakake, Donna M. Gemma and John F. McBurney IV of the Workers' Compensation Court for their extraordinary efforts in the publication of this report.

The Judges and staff of the Rhode Island Workers' Compensation Court remain committed to serving the people of the State of Rhode Island. As the business climate evolves in response to the spectre of terrorism and its impact on the global economy, the workers' compensation system must continue to adapt. We are proud of our achievements but we do not intend to rest on our laurels.

If any member of the court can be of assistance, please feel free to call.

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